No. 22429

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ALBERT G. BEATTIE,	)
	)
Appellant,	)
	)
vs.	)
	)
LOUIS S. NELSON, Warden, JAMES W. L. PARK, Administrator, San Quentin Prison,	)
	)
Appellees.	)

APPELLEE'S BRIEF

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APPELLEE'S BRIEF

The jurisdiction of the United States District Court for the Northern District of California to entertain appellant's complaint below was conferred by the Civil Rights Act (42 U.S.C. § 1983 and 28 U.S.C. § 1343). Proceedings in forma pauperis are authorized by 28 United States Code section 1915. The jurisdiction of this court is conferred by Title 28, United States Code section 1291.

STATEMENT OF THE CASE

Appellant, an inmate confined in the California State Prison at San Quentin, sought to file a complaint in forma pauperis under the Federal Civil Rights Act (42 U.S.C. § 1983), seeking injunctive relief and monetary damages against the above-named defendants. In his complaint appellant alleged that he had been denied permission

to purchase a copy of the opinion in Beattie v. California, 386 U.S. 285 (1967) which had vacated his judgment of conviction and remanded the case for further proceedings in the light of Chapman v. United States, 386 U.S. 18 (1967), and certain other legal materials which he alleged were necessary for the proper research and presentation of pending legal actions which he had undertaken (RT 1-12).

In support of his claims, appellant attached exhibits B through D to the complaint to establish that on July 10, 1967, he had requested permission to purchase the following legal materials (RT 6-8):

> Beattie v. Calif. -U.S.-, 18 L.Ed.2d 51, 87 S.Ct. (1967) $1.50
>
> Smith's Review on Tort's (1958) $3.00
>
> Smith & Roberson Workbook by Donnelly & Casey (1965) $2.50
>
> Prosser on Torts, 3 Rd. Ed. (1964) $12.50 HB
>
> Federal Rules on Civil Procedure (1966) Ed. Pamphlet $8.00

Exhibit "A" attached to his complaint showed that while he had been denied permission to buy the requested reference materials, he had been given permission to purchase a copy of the opinion in Beattie v. California, supra. Exhibit "A" also showed that this action was taken in accordance with the pertinent prison rules which do not

permit inmates to own personal copies of law books or reference materials, but do permit them to receive or purchase a copy of an opinion or decision in their own case (RT 5).

By order dated September 29, 1967, the United States District Court for the Northern District of California, the Honorable Robert F. Peckham, presiding, ruled that the complaint failed to state a constitutional claim cognizable under the civil rights statutes and denied appellant leave to file the complaint in forma pauperis (RT 13-14). The District Court based its decision primarily upon this Court's decision in Hatfield v. Bailleaux, 290 F.2d 632 (9th Cir. 1961), holding that prison inmates do not have a constitutional right to accumulate a personal law library. The Court further held that the present complaint failed to state a cause of action as in DeWitt v. Pail, 366 F.2d 682 (9th Cir. 1966) wherein alleged action of the respondent interfered with the inmate's access to the courts. Thus concluding that the complaint failed to allege any violation of constitutional rights, the Court held that pursuant to the discretion set forth in Shobe v. State California, 362 F.2d 545 (9th Cir. 1966), the complaint could not be filed in forma pauperis.

On November 15, 1967, following the filing of

a "motion to rehear or motion for certificate of probable cause" and other documents (CT 15-28), the District Court further ordered that appellant be permitted to file a notice of appeal in forma pauperis. This appeal accordingly follows.

SUMMARY OF APPELLANT'S ARGUMENT

The District Court improperly refused permission to file the complaint.

SUMMARY OF APPELLEE'S ARGUMENT

1. Appellant's appeal is barred because the subject matter is res judicata.

2. The District Court properly refused appellant permission to file his complaint, since the complaint failed to state a federal claim.

ARGUMENT

I

APPELLANT'S APPEAL IS BARRED BECAUSE THE SUBJECT MATTER IS RES JUDICATA.

The District Court's order which denied appellant leave to file his complaint in forma pauperis was a decision basically on the merits. However, it is well established that a court may take judicial notice of its own proceedings in other cases, as well as the records of other courts in related proceedings. United States v. Pink, 315 U.S. 203, 216 (1942); see also, Lambert v.

Conrad, 308 F.2d 571 (9th Cir. 1962); St. Paul Fire & Marine Ins. Co. v. Cunningham, 257 F.2d 731, 732 (9th Cir. 1958). If judicial notice is taken, it is clear that there is a separate and independent ground for sustaining the District Court's order, other than the merits, and that is because the doctrine of res judicata is fully applicable here. Pursuant to that doctrine this Court may note the following:

On January 7, 1966 the Honorable Judge Albert C. Wollenberg of the United States District Court for the Northern District of California, denied appellant and a co-plaintiff leave to file a civil rights complaint brought against the appellees here named in an action entitled Richard Louis Bowden and Albert Greenville Beattie, Plaintiffs v. Lawrence E. Wilson, Warden, and James W. L. Park, Associate Warden, San Quentin Prison, Respondents, Misc. No. 1288. There, as here, appellant was denied permission to buy some legal books, while granted permission to buy others (not the ones here involved) and similarly alleged "that prison regulations prevent them and others similarly situated from purchasing law books of their choice which are to be used to prepare legal documents." Bowden and Beattie v. Wilson and Park, supra; and see the complaint and exhibits on file with the United States District Court in the above-named case. The

crux of the Court's opinion denying appellant's claims was as follows:

> "It may be conceded that due process requires that inmates have access to the courts to present their grievances, but it does not logically follow that this in effect means that each inmate should be allowed to maintain a personal law library should he so desire.
>
> "Moreover, the attachments presented with the complaint indicate that petitioners have been given permission to purchase certain legal publications to aid them with their research and that the facilities of the prison library are open and available.
>
> "This court does not feel that Constitution requires more. There is no basis for argument that an inmate is entitled to maintain as extensive a personal law library as he wishes."[1]/

Thereafter, in an action entitled Albert Granville Beattie, Petitioner v. Lawrence E. Wilson, Warden, and James W. L. Park, Associate Warden, San Quentin Prison,

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1. A full copy of Judge Wollenberg's order is attached hereto as Exhibit "A".

Respondents, Misc. No. 2653, this Court on February 10, 1966, in essence, affirmed Judge Wollenberg's order, stating:

> "Petitioner, a California state prisoner seeks leave to appeal in forma pauperis from an order of the district court denying leave to file a civil rights action seeking to obtain an order authorizing the unrestricted purchase of law books.
>
> "The motion is denied as legally frivolous for the reasons expressed by Judge Wollenberg in the order denying leave to file the complaint."[2]/

According to this Court's docket sheet and the files of the California Attorney General's Office, an action instituted by appellant entitled "Albert G. Beattie v. United States District Court, Ninth Circuit Court of Appeals" to review the Courts' orders in the United States Supreme Court was later abandoned.

Accordingly, we submit that where, as here, the parties and issues are identical, the doctrine of res judicata is fully applicable. Rhodes v. Meyer, 334 F.2d

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2. A copy of this Court's order is attached hereto as Exhibit "B".

709 (8th Cir. 1964); Hill v. Nelson, 272 F.Supp. 790, 802 (N. D. Calif. 1967).

II

THE DISTRICT COURT PROPERLY REFUSED APPELLANT PERMISSION TO FILE THIS COMPLAINT, SINCE THE COMPLAINT FAILED TO STATE A FEDERAL QUESTION.

In any event it is clear that the District Court properly refused appellant leave to file his complaint in forma pauperis since the complaint did not state a cause of action cognizable under the civil rights statutes.

In Shobe v. State of California, 362 F.2d 545 (9th Cir. 1966) this Court held that the privilege of filing and prosecuting a civil action under 28 United States Code section 1915 is a matter resting within the sound discretion of the court. Moreover, as the District Court stated, since it is only under extraordinary situations that the federal courts will interfere with the internal affairs of state penitentiaries, this Court has held that the the latitude of discretion accorded the ruling of a district court in granting or refusing permission to proceed in forma pauperis is especially broad in civil actions by prisoners against wardens and other officials connected with the institution in which they are incarcerated. Smart v. Heinz, 347 F.2d 114 (9th Cir. 1965).

In his present complaint, of course, appellant

did not allege that he had been denied all access to the use of legal materials or to the use of the prison law library facilities, nor, does he so allege in his opening brief (cf. AOB p. 4).

Similarly, appellant did not allege that he had been denied access to the courts, as did the complainant in DeWitt v. Pail, 366 F.2d 682 (9th Cir. 1966) who alleged that the confiscation of an appeals transcript and other documents prevented him from pursuing a direct appeal from his state conviction. Nor, indeed, did appellant assert here that it was necessary for him to do his own legal research in prison because he could not obtain legal counsel in any of his pending actions. Indeed, in view of the facts of which this Court may take judicial notice such allegations could not validly have been made.[3]

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3. Thus, in addition to the proceedings to which we have already referred, this Court may take judicial notice that there is presently pending in this Court Gilmore v. Lynch, Case No. 22052, which involves, inter alia, the question of whether the District Court properly refused to convene a three judge court in the consolidated actions of John Van Geldern v. Thomas C. Lynch, et al., in Case Nos. 45878, 46297, 46298, and 46299, pending in the United States District Court for the Northern District of California, of which appellant is a party. In the proceedings in the District Court, the complainants, represented by counsel, are also seeking, inter alia, to attack regulation of the use of legal materials in prison.

Similarly, this Court may note that appellant, again represented by counsel, presently has pending a petition for writ of certiorari in the United States Supreme Court in Misc. No. 1077, in which he seeks to set aside his robbery conviction.

Rather, it was appellant's complaint that he should be able to buy and personally own the requested materials in order to "properly" present his case to the courts (RT 2). In this connection, appellant first alleged that on May 15, 1967 he had requested to buy "his own opinion" of Beattie v. California, 386 U.S. 285 (1967), and further indicated that he had been denied permission to buy a copy of the opinion. However, at Exhibit "A" of the complaint, it clearly appears that on July 17, 1967, permission was given to appellant to buy a copy of the opinion of his case, a course of action consistent with the pertinent rules of the Department of Corrections, similarly set forth in that exhibit.

Appellant also alleged that he had been denied permission to buy other reference materials for his personal use which he stated he needed in connection with pending (albeit, in the complaint, unnamed and unspecified) legal actions. The other reference materials were:

Smith's Review on Tort's (1958) $3.00

Smith & Roberson Workbook by Donnelly & Casey (1965) $2.50

Prosser on Torts, 3 Rd. Ed. (1964) $12.50 HB

Federal Rules of Civil Procedure (1966) Ed. Pamphlet $8.00

Appellant was not permitted to buy personal copies of these materials pursuant to the prison rule prohibiting

inmates from personally owning law books or reference material. Apart from the fact that appellant did not allege in what way these particular books on torts and civil procedure were necessary to him in his pending actions (and, particularly in attacking his criminal conviction), it is clear, in any event, that appellant's complaint does not state a cause of action cognizable under the federal civil rights statutes.

In Hatfield v. Bailleaux, 290 F.2d 632f (9th Cir. 1961), cert. denied, 368 U.S. 862 (1961), this Court held that the state is not under any constitutional obligation to provide law books to prisoners for their use in either civil or criminal litigation in which they may be a party plaintiff or party defendant. The court there stated:

> "State authorities have no obligation under the federal Constitution to provide library facilities and an opportunity for their use to enable an inmate to search for legal loopholes in the judgment and sentence under which he is held, or to perform services which only a lawyer is trained to perform. All inmates are presumed to be confined under valid judgments and sentences. If an inmate believes he has a meritorious

reason for attacking his, he must be given an opportunity to do so. But he has no due process right to spend his prison time or utilize prison facilities in an effort to discover a ground for overturning a presumptively valid judgment." 290 F.2d at 640-641.

Numerous subsequent federal decision are in accord. See e.g., Lee v. Tahash, 352 F.2d 970, 973-74 (8th Cir. 1965); Roberts v. Pepersack, 256 F.Supp. 415, 433-34 (D. Md. 1966); and United States v. Pennsylvania, 247 F.Supp. 7, 11-13 (E. D. Pa. 1965); (wherein at footnote 18 at page 13, any authority to the contrary in United States ex rel. Mayberry v. Prasse, 225 F.Supp. 752 (E. D. Pa. 1963) is limited to the peculiar facts of that case). For example, the court made the following observations in Roberts:

"The right to petition or correspond with a court does not include a right to be furnished with an extensive collection of legal materials. Such a collection either in one's own cell or in the prison library will encourage 'fishing expeditions' in which an inmate seeks out cases where the allegations made received favorable consideration and adopts these allegations as his own. By denying Roberts this opportunity to raise spurious claims, the prison authorities

are perhaps hindering his access to a 'remedy.' Again, such a hinderance is justifiable.

"Prisons are not intended, nor should they be permitted, to serve the purpose of providing inmates with information about methods of securing release therefrom. . . . [I]f [a prisoner] does set forth allegations, which he does not know how to frame in terms of constitutional deprivations, this court will frame them for him. That arrangement is far superior to the 'fishing expedition' system that many inmates would prefer." 256 F.Supp. at 433.

Similarly, in DeWitt v. Pail, supra, at p. 686, this Court said:

"On the other hand, prison regulations, customs and usages limiting the times and places in which inmates may engage in legal research and preparation of legal papers, and forbidding or restricting the assistance one inmate may render to another on legal matters, involve no violation of civil rights, provided the purpose or effect thereof, or the means adopted in enforcing them, is not unreasonably to hamper inmates in gaining access to the courts. See Hatfield v. Bailleaux, 9 Cir.,

290 F.2d 632, 638, 640."

The above cases also represent the view of the California courts. In re Allison, 66 Cal.2d 282, 57 Cal.Rptr. 593, 425 P.2d 193 (1967); In re Schoengarth, 66 Cal.2d 295, 57 Cal.Rptr. 600 425 P.2d 200 (1967). Under the present case law, therefore, it is clear that the District Court properly refused permission to appellant to file the complaint in forma pauperis. As a matter of law the complaint did not state a cause of action cognizable under the civil rights statutes, and certainly no constitutional violation was involved insofar as a right to own personal copies of the particular books requested, was concerned.

Finally, it may be noted that in his brief (see e.g., AOB p. 4), appellant has made some allegations which he made in other proceedings,[4/] but which were not alleged in the complaint below, and are therefore not properly raised here.

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4. See John Van Geldern, et al. v. Thomas C. Lynch, et al., in Case Nos. 45878, 46297, 46298 and 46299 in the United States District Court, Northern District of California, and Gilmore, et al. v. Lynch, Case No. 22052, pending in this Court.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the District Court's order should be affirmed.

Dated: April 15, 1968

THOMAS C. LYNCH, Attorney General
of the State of California

DERALD E. GRANBERG
Deputy Attorney General

Louise H Renne

LOUISE H. RENNE (Mrs.)
Deputy Attorney General

Attorneys for Appellees

CERTIFICATE OF COUNSEL

I certify that in connection with the preparation of this brief, I have examined Rules 18, 19, and 39 of the United States Court of Appeals for the Ninth Circuit and that in my opinion this brief is in full compliance with these rules.

Dated: April 15, 1968

San Francisco, California

Louise H Renne

LOUISE H. RENNE
Deputy Attorney General
of the State of California

E X H I B I T S

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

- - - - - - -

RICHARD LOUIS BOWDEN and ALBERT GREENVILLE BEATTIE,

Plaintiffs,

vs.

LAWRENCE E. WILSON, Warden and JAMES W. L. PARK, Associate Warden, San Quentin Prison,

Respondents.

Misc.

NO. 1288

ORDER

Petitioners seek permission to file a civil rights complaint in forma pauperis alleging that prison regulations prevent them and others similarly situated from purchasing law books of their choice which are to be used to prepare legal documents.

It is argued that since the prison law library is inadequate and usually overcrowded, it would be in the best interest of the state to allow inmates to purchase their own books.

Copies to F. C. & Petitioners 1-13-66 TC

EXHIBIT A

It may be conceded that due process requires that inmates have access to the courts to present their grievances, but it does not logically follow that this in effect means that each inmate should be allowed to maintain a personal law library should he so desire.

Moreover, the attachments presented with the complaint indicate that petitioners have been given permission to purchase certain legal publications to aid them with their research and that the facilities of the prison library are open and available.

This court does not feel that Constitution requires more. There is no basis for argument that an inmate is entitled to maintain as extensive a personal law library as he wishes.

Accordingly, permission to file this complaint in forma pauperis is DENIED.

Dated: January 7th 1966

Albert Wollenberg
United States District Judge

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ALBERT GRANVILLE BEATTIE, Petitioner,	)	
vs.	)	MISC. 2653
LAWRENCE E. WILSON, Warden, and JAMES W. L. PARK, Associate Warden, San Quentin Prison, Respondent.	)	O R D E R

Petitioner, a California state prisoner, seeks leave to appeal in forma pauperis from an order of the district court denying leave to file a civil rights action seeking to obtain an order authorizing the unrestricted purchase of law books.

The motion is denied as legally frivolous for the reasons expressed by Judge Wollenberg in the order denying leave to file the complaint.

/s/ Richard H. Chambers

/s/ Homer T. Bone

United States Circuit Judges

Enclosed

EXHIBIT B